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**Filed** : **August 25, 2003**

### **REMARKS**

Claims 20, 25 and 26 have been canceled. Applicant maintains that the cancellation of a claim makes no admission as to its patentability and reserves the right to pursue the subject matter of the cancelled claim in this or any other patent application. Applicant has amended claims 1 and 4 to recite “wherein said first and third axes form a fixed control angle ... and said first and third axes intersect at a single point” and “wherein said first and said second axes form a fixed contour angle that is less than 180 degrees.” Support for these amendments can be found in the specification as filed, for example in Figure 6. Claim 10 is amended to recite “a front or rear perspective that is substantially hour-glass in shape, having.” Support for this amendment can be found in the specification as filed, for example in Figure 1. Applicant has added new claims 29-32. Support for these claims can be found in the specification and claims as filed, for example in Figure 6, and at paragraphs [0021], [0028], and [0029].

Claims 1-8, 10-12, 15, 21-24, and 27-32 are presented for examination. Applicant responds below to the specific rejections raised by the PTO in the Office Action mailed June 26, 2006. For the reasons set forth below, Applicant respectfully traverses.

#### **Rejection under 35 U.S.C. §112, second paragraph – Indefiniteness**

The PTO rejects claims 10-12, 15, 20 and 23-26 under 35 U.S.C. §112, second paragraph as being indefinite.

In particular, the PTO states that there is no antecedent basis for “said first longitudinal portion” in claim 10. Applicant has amended claim 10 by replacing “said first longitudinal portion” with “said lower longitudinal portion.”

The PTO states that line 5 of claim 20 which recites “a generally arcuate handle having means for improving manipulation” is unclear because as written, the claim requires an arcuate handle with an additional structure for improving manipulation while the specification and figures it is the arcs that improve the manipulation. Applicant respectfully disagrees.

Claim 20 has been canceled, rendering this rejection moot.

In view of the above amendment and arguments, Applicant requests that the enablement rejection of claims 10-12, 15, 20 and 23-26 be withdrawn.

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**Rejection under 35 U.S.C. §102(b) – Anticipation**

The PTO has rejected claims 1, 7, 8, 10, 21 and 23 under 35 U.S.C. §102(b) as being anticipated by Heller (4,700,477) as illustrated in Appendix A of the Office Action. Applicant respectfully traverses.

**Claims 1, 7, 8 and 21**

In rejecting claims 1, 7, 8, and 21 the PTO states that angle 103 of Appendix A is the control angle, and that it is less than ninety degrees. Without conceding that Heller discloses a lower, middle, and upper portion of a handle, Applicant notes that given the labels in Appendix A, the specification of the currently pending application teaches that the control angle of Appendix A is not angle 103 as the PTO indicated, but instead the control angle is the angle that is adjacent and supplementary to angle 103 in Appendix A. The fact that the wrong angle in Appendix A is labeled as the control angle can be illustrated by taking axis 35 of Figure 6A of the pending application, and pivoting it about the intersection of axes 35 and 33, such that contour angle C increases to greater than 180 degrees, such that Figure 6A more closely resembles Appendix A. As angle C increases, and angle B is held constant, the control angle A gets larger, and increases to more than 90 degrees. Thus, even if one assumes that Heller discloses a lower, middle, and upper handle portion with longitudinal axes as labeled by the PTO in Appendix A, the control angle of Heller when properly identified is greater than 90 degrees.

Because the control angle of Heller is not less than or equal to 90 degrees as recited in claims 1, 7, and 8, Heller does not anticipate these claims. Therefore, Applicant respectfully requests that, for at least this reason, the PTO reconsider and withdraw the rejection of claims 1, 7, 8 and 21 as anticipated by Heller.

In addition to the above difference between Heller and pending claim 1, Applicant notes that as amended, independent claims 1 and 4 recite “wherein said first and said second axes form a fixed contour angle that is less than 180 degrees.” Given the placement of axes B and C by the PTO in Appendix A, to the extent that Heller discloses a lower and middle handle portion, the contour angle between them is greater than 180 degrees (see Figure 6 for the proper location of the contour angle C).

**Claims 10 and 23**

Referring to Appendix A, the PTO states that Heller discloses a lower longitudinal portion of a first curved shape 102a, a middle longitudinal portion of a second curved shape

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101a, and a waist portion 101 formed between the first and second curved shape. Applicants respectfully disagree.

Applicant does not concede that Heller discloses a lower longitudinal portion of a first curved shape, a middle longitudinal portion of a second curved shape, and a waist portion formed between the first and second curved shape. However, as amended, claim 10 recites “wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape.” Heller does not disclose a handle portion that is substantially hour-glass in shape. Therefore, Heller does not disclose each and every element of claims 10 and 23, and Applicant respectfully requests that, for at least this reason, the anticipation rejection of claims 10 and 23 under §102(b) be withdrawn.

Claim 4

The PTO rejects claim 4 as anticipated by Carreker, as labeled by the PTO in Appendix B. The PTO argues that “[w]hen portion 11 is in the fully extended position, axis C is parallel with axis B and would then form a control angle greater than 90 degrees. Since specifics about the position of these axes are not featured in the claims any axis from each of the portion can be considered the claimed axes.” *Office Action* at 5. Applicant respectfully disagrees.

Applicant does not concede that Carreker discloses a lower, middle, and upper handle portion along a first, second, and third axes, respectively, as recited in claim 4. However, as amended, claim 4 recites “wherein said first and said second axes form a fixed contour angle that is less than 180 degrees.” According to the PTO, when “fully extended” the first and second axes of Carreker are parallel, and therefore they cannot form a fixed contour angle that is less than 180 degrees. Thus, Carreker does not disclose each and every element of claim 4, and Applicant respectfully requests that, for at least this reason, the PTO withdraw the anticipation rejection of claim 4 under §102(b).

**Rejection under 35 U.S.C. §103(a) – Obviousness**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success.

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Finally, the prior art reference(s) must teach or suggest all the claim limitations. See *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); *M.P.E.P.* § 2143 (8<sup>th</sup> ed. 2004).

Claims 2, 3, 11 and 12

The PTO rejects claims 2, 3, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over a combination of Heller in view of Heinrich (2,139,680). The PTO states that Heller discloses the invention but fails to disclose a replaceable head portion, which Heinrich discloses. Applicant respectfully disagrees.

Claims 2, 3, 11 and 12 depend from claims 1 and 10. For the reasons discussed above with respect to the §102(b) anticipation rejection of claims 1 and 10, Heller does not disclose the invention of claims 1 and 10. Specifically, with respect to claims 2, and 3, the control angle of Heller is not less than or equal to 90 degrees as recited in these claims, and Heinrich does not disclose any control angle. With respect to claims 11 and 12, neither Heller nor Heinrich discloses a handle portion that is substantially hour-glass in shape. Thus, the combination of Heller and Heinrich fails to disclose or suggest each and every element of claims 2, 3, 11 and 12, and the PTO has failed to establish a *prima facie* case of obviousness. Applicant therefore respectfully requests that, for at least these reasons, the PTO reconsider and withdraw the rejection of claims 2, 3, 11 and 12 as obvious over Heller in light of Heinrich.

Claims 6 and 15

The PTO rejects claims 6 and 15 as obvious over Heller in view of Carreker. The PTO states that Heller discloses the invention, but fails to disclose a second blade which is disclosed by Carreker. Applicants respectfully disagree.

Claims 6 and 15 depend from claims 1 and 10. For the reasons discussed above with respect to the §102(b) anticipation rejection of claims 1 and 10, Heller does not disclose the invention of claims 1 and 10. Specifically, with respect to claim 6, neither Heller nor Carreker discloses a fixed control angle that is less than or equal to 90 degrees. With respect to claim 15, neither Heller nor Carreker disclose a handle portion that is substantially hour-glass in shape. Thus, the combination of Heller and Carreker fails to disclose or suggest each and every element of claims 6 and 15, and the PTO has failed to establish a *prima facie* case of obviousness. Applicant therefore respectfully requests that, for at least these reasons, the PTO reconsider and withdraw the rejection of claims 6 and 15 as obvious over Heller in light of Carreker.

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Claims 1 and 5

The PTO rejects claims 1 and 5 as obvious over Attaway (D371,221) in view of Heller. The PTO states that Attaway discloses a handle portion having a lower, middle and upper longitudinal portions extending along a first, second and third axes, respectively, but is silent regarding a head portion having a width less than or equal to one inch. The PTO states that Heller discloses that it is old and well known in the art of eyebrow shaving to incorporate a head portion having a width of less than one inch. Applicants respectfully disagree.

Applicant does not concede that Attaway discloses a handle portion having a lower, middle and upper longitudinal portions extending along a first, second and third axes, respectively. However, even assuming that Attaway does, Attaway not disclose a handle portion "wherein said first and third axes form a fixed control angle wherein said control angle is less than or equal to ninety degrees and said first and third axes intersect at a single point" as recited in claim 1 and dependent claim 5. Instead, the PTO states that Attaway forms a control angle of 0 degrees which requires that the first and third axes are overlapping, and not intersecting at a single point. Thus, the combination of Attaway and Heller, even accepting the PTO's characterization, fails to disclose or suggest each and every element of claims 1 and 5, and the PTO has failed to establish a *prima facie* case of obviousness. Applicant therefore respectfully requests that, for at least this reason, the PTO reconsider and withdraw the rejection of claims 1 and 5 as obvious over Attaway in light of Heller.

Claims 20, 25 and 26

Applicant has canceled claims 20, 25 and 26, rendering the rejection of these claims moot. Applicant maintains that the cancellation of a claim makes no admission as to its patentability and reserves the right to pursue the subject matter of the cancelled claim in this or any other patent application.

Claims 22 and 24

The PTO rejects claims 22 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Heller. The PTO states that Heller discloses the invention but fails to disclose a head portion that is equal to or less than 1/8 inch wide, but that such modification of Heller would have been obvious. Applicant respectfully disagrees.

Claims 22 and 24 depend from claims 1 and 10. For the reasons discussed above with respect to the §102(b) anticipation rejection of claims 1 and 10, Heller does not disclose the

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invention of claims 1 and 10. Specifically, with respect to claim 22, the control angle of Heller is not less than or equal to 90 degrees as recited in this claim. With respect to claim 24, Heller does not disclose a handle portion that is substantially hour-glass in shape. Thus, Heller fails to disclose or suggest each and every element of claims 22 and 24, and the PTO has failed to establish a *prima facie* case of obviousness. Applicant therefore respectfully requests that, for at least this reason, the PTO reconsider and withdraw the rejection of claims 22 and 24 as obvious over Heller.

Claims 27 and 28

The PTO rejects claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Carreker in view of Heller. The PTO states that Carreker discloses the invention but fails to disclose a head portion that is equal to or less than 1/4 or 1/8 inch wide, but that such modification of Carreker in view of Heller would have been obvious. Applicant respectfully disagrees.

Claims 27 and 28 depend from claim 4. For the reasons discussed above with respect to the §102(b) anticipation rejection of claim 4, Carreker does not disclose the invention of claim 4. Specifically, as amended, claim 4 recites “wherein said first and said second axes form a fixed contour angle that is less than 180 degrees.” According to the PTO, when “fully extended” the first and second axes of Carreker are parallel, and therefore they cannot form a fixed contour angle that is less than 180 degrees. Similarly, Heller does not disclose a fixed contour angle of less than 180 degrees. Thus, Carreker, alone or in combination with Heller, fails to disclose or suggest each and every element of claims 27 and 28, and the PTO has failed to establish a *prima facie* case of obviousness. Applicant therefore respectfully requests that, for at least these reasons, the PTO reconsider and withdraw the rejection of claims 27 and 28 as obvious over Carreker in view of Heller.

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### CONCLUSION

In view of the above, Applicant respectfully maintains that claims are patentable and request that they be passed to issue. Applicant invites the Examiner to call the undersigned if any remaining issues may be resolved by telephone.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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